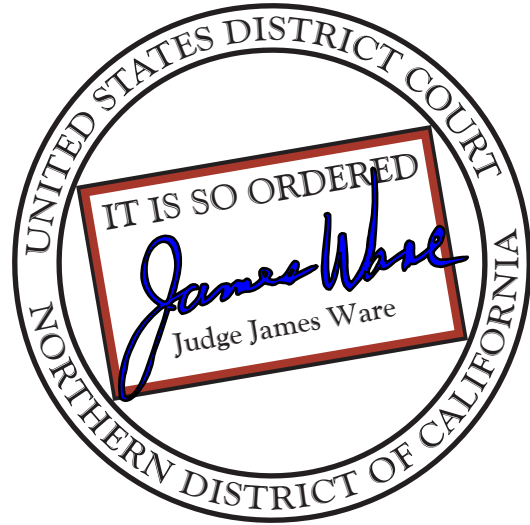


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Attorneys for Plaintiff, Stephen C. Leal

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA; SAN JOSE DIVISION

STEPHEN C. LEAL,

Plaintiff,

vs.

CASE NO. CV 05-00959 JW

**STIPULATION AND ORDER
GRANTING LEAVE TO FILE A FIRST
AMENDED COMPLAINT**

OFFICER K. SIEGEL, an individual;
SAN JOSE POLICE DEPARTMENT;
CITY OF SAN JOSE; SANTA CLARA
COUNTY DEPARTMENT OF
CORRECTIONS;
OFFICER ZOMPOLIS (#1635), an
individual formerly named as DOE 1,
OFFICER DURAN (#2520), and
individual formerly named as DOE 2,
OFFICER VILLAGOMEZ (#2632), an
individual formerly named as DOE 3,
SGT. D. WOODS (#1804), an individual
formerly named as DOE 4,
AND DOES 5 through 10, inclusive,
Defendant(s).

1 The parties, through their respective counsel, hereby stipulate that an order may
2 be entered permitting the plaintiff, Stephen Leal, to file a First Amended Complaint, a
3 copy of which is attached hereto as Exhibit A.

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5
6 Dated: April 24, 2006

LAW OFFICES OF SEAN G. ERENSTOFT

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9 _____
10 Sean G. Erenstoft, Esq.
11 Attorney for Plaintiff,
STEPHEN LEAL

12 Dated: April 24, 2006

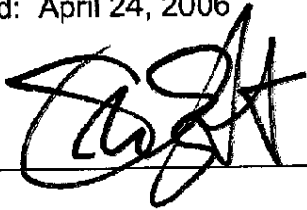
LAW OFFICE OF LOUIS P. DELL

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16 Louis P. Dell, Esq.
17 Attorney for Plaintiff,
18 STEPHEN LEAL
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1 The parties, through their respective counsel, hereby stipulate that an order may
2 be entered permitting the plaintiff, Stephen Leal, to file a First Amended Complaint, a
3 copy of which is attached hereto as Exhibit A.
4
5

6 Dated: April 24, 2006

LAW OFFICES OF SEAN G. ERENSTOFT

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Sean G. Erenstoft, Esq.
Attorney for Plaintiff,
STEPHEN LEAL

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11
12 Dated: April 24, 2006

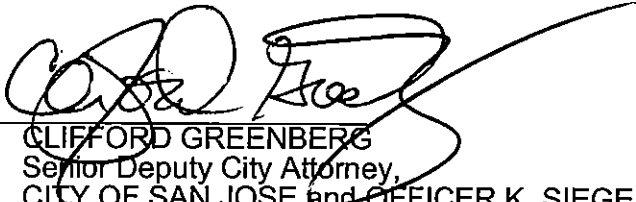
LAW OFFICE OF LOUIS P. DELL

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Louis P. Dell, Esq.
Attorney for Plaintiff,
STEPHEN LEAL
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2 Dated: April 24, 2006

OFFICE OF THE CITY ATTORNEY OF SAN
JOSE

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CLIFFORD GREENBERG
Senior Deputy City Attorney,
CITY OF SAN JOSE and OFFICER K. SIEGEL

Dated: April 24, 2006

OFFICE OF THE COUNTY COUNSEL OF
SANTA CLARA

MICHAEL ROSSI
Deputy County Counsel,
COUNTY OF SANTA CLARA DEPARTMENT
OF CORRECTION


ORDER

IT IS HEREBY ORDERED that plaintiff shall be entitled to file a First Amended Complaint, a copy of which is attached hereto as Exhibit A.

IT IS FURTHER ORDERED that the defendants CITY OF SAN JOSE and OFFICER K. SIEGEL COUNTY OF SANTA CLARA DEPARTMENT OF CORRECTION shall have 20-days in which to file and serve their response to the amended complaint.

IT IS SO ORDERED:

Dated: April 26, 2006



UNITED STATES DISTRICT JUDGE

1
2 Dated: April 24, 2006

OFFICE OF THE CITY ATTORNEY OF SAN
JOSE

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7 CLIFFORD GREENBERG
Senior Deputy City Attorney,
CITY OF SAN JOSE and OFFICER K. SIEGEL

8 Dated: April 24, 2006

OFFICE OF THE COUNTY COUNSEL OF
SANTA CLARA

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10
11 

12 MICHAEL ROSSI
Deputy County Counsel,
COUNTY OF SANTA CLARA DEPARTMENT
OF CORRECTION

13
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16 **ORDER**

17 IT IS HEREBY ORDERED that plaintiff shall be entitled to file a First Amended
18 Complaint, a copy of which is attached hereto as Exhibit A.

19 IT IS FURTHER ORDERED that the defendants CITY OF SAN JOSE and
20 OFFICER K. SIEGEL COUNTY OF SANTA CLARA DEPARTMENT OF CORRECTION
21 shall have 20-days in which to file and serve their response to the amended complaint.

22
23 **IT IS SO ORDERED:**

24 Dated:

25
26 UNITED STATES DISTRICT JUDGE
27
28

1 The parties, through their respective counsel, hereby stipulate that an order may
2 be entered permitting the plaintiff, Stephen Leal, to file a First Amended Complaint, a
3 copy of which is attached hereto as Exhibit A.

4
5
6 Dated: April 24, 2006

LAW OFFICES OF SEAN G. ERENSTOFT

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9 _____
10 Sean G. Erenstoft, Esq.
11 Attorney for Plaintiff,
STEPHEN LEAL

12 Dated: April 24, 2006

LAW OFFICE OF LOUIS P. DELL

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15 _____
16 Louis P. Dell, Esq.
17 Attorney for Plaintiff,
18 STEPHEN LEAL
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1
2 Dated: April 24, 2006

OFFICE OF THE CITY ATTORNEY OF SAN
JOSE

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8 Dated: April 24, 2006

CLIFFORD GREENBERG
Senior Deputy City Attorney,
CITY OF SAN JOSE and OFFICER K. SIEGEL

9 OFFICE OF THE COUNTY COUNSEL OF
SANTA CLARA

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MICHAEL ROSSI
Deputy County Counsel,
COUNTY OF SANTA CLARA DEPARTMENT
OF CORRECTION

ORDER

IT IS HEREBY ORDERED that plaintiff shall be entitled to file a First Amended Complaint, a copy of which is attached hereto as Exhibit A.

IT IS FURTHER ORDERED that the defendants CITY OF SAN JOSE and OFFICER K. SIEGEL COUNTY OF SANTA CLARA DEPARTMENT OF CORRECTION shall have 20-days in which to file and serve their response to the amended complaint.

IT IS SO ORDERED:

Dated:

UNITED STATES DISTRICT JUDGE

Exhibit A

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Attorneys for Plaintiff, Stephen C. Leal

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA; SAN JOSE DIVISION

STEPHEN C. LEAL,

Plaintiff,
vs.

OFFICER K. SIEGEL, an individual;
SAN JOSE POLICE DEPARTMENT;
CITY OF SAN JOSE; SANTA CLARA
COUNTY DEPARTMENT OF
CORRECTIONS;
OFFICER ZOMPOLIS (#1635), an
individual formerly named as DOE 1,
OFFICER DURAN (#2520), and
individual formerly named as DOE 2,
OFFICER VILLAGOMEZ (#2632), an
individual formerly named as DOE 3,
SGT. D. WOODS (#1804), an individual
formerly named as DOE 5,
AND DOES 5 through 10, inclusive,
Defendant(s).

CASE NO. CV 05-00959 JW

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND DEMAND FOR JURY
TRIAL**

Introduction

The plaintiff, Stephen C. Leal, alleges and states:

1. This action is filed for money damages brought pursuant to Title 42 of the United States Code, Sections 1983 and 1988 and the Fourth and Fourteenth Amendments to the Constitution of the United States, the Constitution and Statutes of California and the common law of the State of California against the San Jose Police Department, the City of San Jose, and the California Department of Corrections and the several police officers that made contact with Plaintiff during the relevant times discussed herein. Jurisdiction is founded upon Title 28 of the United States Code, Sections 1331, 1343(a)(3), and 1391(b) and the above-mentioned statutory and constitutional provisions, and the pendent jurisdiction of this court to entertain claims arising under state law.

2. Stephen Leal alleges that the individual defendant police officers made an unreasonable seizure of the person of Stephen Leal, violating his rights under the Fourth and Fourteenth Amendments to the United States Constitution, and that these defendants assaulted and battered Stephen Leal. It is further alleged that these violations and torts committed by the individual defendants were committed as a result of San Jose Police Department and Santa Clara Department of Corrections policies and customs, and a failure to train or their employee and agents.

3. The claims arose in this district, and venue in this court is therefore proper.

Parties

4. Plaintiff Stephen C. Leal is a citizen of the United States and the State of California, County of Los Angeles.

5. During all times mentioned herein, the defendants, Officer K. Siegel, Officer Zompolis (#1635) (Doe 1 is hereby identified as Officer Zompolis), Officer Duran (#2520) (Doe 2 is hereby identified as Officer Duran), Officer Villagomez (#2632) (Doe

3 is hereby identified as Officer Villagomez), Sgt. D. Woods (#1804) (Doe 4 is hereby identified as Sgt. D. Woods) and DOES 5-10, were duly appointed and acting officers of the San Jose Police Department and/or the City of San Jose and/or the Santa Clara Department of Corrections, acting under color of law, to wit, under color of the statutes, ordinances regulations, policies, customs, and usages of the State of California, the City of San Jose and/or the San Jose Police Department.

6. The City of San Jose, California, is a municipal corporation, incorporated under the laws of the State of California and having its principal place of business in the State of California, and the public employer of said officers.

7. The San Jose Police Department is a department or subdivision of the City of San Jose, California.

8. The Santa Clara Department of Corrections is a department or subdivision of the County of Santa Clara, a political subdivision of the state of California.

9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 5 through 10, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner to plaintiffs as hereinafter alleged, and that plaintiff's damages as herein alleged were proximately caused by their conduct.

10. During all times mentioned herein, the defendants, Does 5 through 10, are believed to be employees with the San Jose Police Department, the Santa Clara Department of Corrections, or other law enforcement agencies, acting under color of law, to wit, under color of the statutes, regulations, policies, customs, and usages of the State of California, the City of San Jose, the San Jose Police Department, and/or the Santa Clara Department of Corrections.

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Factual Allegations

11. On or about July 22, 2004, Leal met with clients over a business dinner from 9:30 p.m. - 11:30 p.m. He had not been drinking alcoholic beverages during the relevant times hereon.

12. While attempting to exit a parking garage in downtown San Jose, being unfamiliar with downtown San Jose area and driving patterns; and seeing no traffic direction signage; Leal mistakenly turned onto Fourth street in the wrong direction.

13. Realizing his error, Leal stopped his vehicle in an attempt to turn back into the correct direction of traffic.

14. On or about July 23, 2004, while Leal was attempting to turn back into the correct direction of traffic, San Jose police officer K. Siegel, and another uniformed officer, pulled behind him and signaled him to stop.

15. Officer Siegel then approached Leal and asked for his license and registration.

16. When Leal was asked if he had been drinking, he replied "No."

17. Officer Siegel then became confrontational.

18. Officer Siegel asked Leal to step out of his car onto the sidewalk and requested Leal to submit to a field sobriety test.

19. Leal declined to submit to the field sobriety test or a breath test and politely requested a blood test instead.

20. Officer Siegel replied, "[S]o, you're refusing to take a test...."

21. Again. Leal insisted that he be given a blood test as he understood the sample tendered could be later tested as evidence.

22. The officers arrested Leal.

23. At the time of Leal's arrest, Officer Siegel misadvised Leal of his right to a blood test.

24. Leal was then transported to intake facility for booking. He was directed to various locations in the intake facility and cooperated fully in the booking process.

1 He was not handcuffed. One or more video cameras situated inside the intake facility
2 clearly reflect Leal's cooperation.

3 25. At one point, Leal was directed into the lobby area of the intake facility
4 and told to sit down. He did as he was instructed. While Leal sat, the defendant
5 officers met together at the booking desk and had a brief discussion. Afterwards,
6 defendant Siegel and another defendant officer remained at the booking desk. Two
7 other defendant officers remained nearby.

8 26. Leal was told to stand in front of the booking desk and complete and sign
9 paperwork pertaining to his alleged refusal to submit to an alcohol test. During this time
10 the defendant officers were watching Leal, in a manner which suggested that such
11 conduct was a result and plan of the discussion held between the defendant officers.

12 27. Upon reviewing the documents placed before him, Leal stated that he
13 would not sign any documents, which purported to constitute a "refusal" to take any
14 alcohol test.

15 28. Upon making that statement, Leal was immediately assaulted by at least
16 three of the individual defendants believed to be Officer Zompolis, Officer Duran, and
17 Villagomez, as follows: One of the defendant officers began approaching Leal from
18 behind, another defendant officer followed. Again, the officers acted and approached in
19 a manner as if this were part of a prior plan or scheme to use physical force on Leal.
20 As they were approaching, Officer Zompolis, who was behind the booking desk,
21 grabbed Leal's right hand or wrist and forcefully pulled him, such that a portion of Leal's
22 body was stretched over a desk or counter. Then Officers Duran and Villagomez who
23 had already been approaching from behind each grabbed an arm, hyper-extending both
24 hands and elbows above and behind his back, forcing Leal's face down onto the
25 counter top in front of him and then onto the floor.

26 29. At no time did Leal resist the efforts or instructions of the police officers.

27 30. Both officers shouted for Leal not to resist, to which Leal clearly
28 responded several times, "I am not resisting."

1 31. Each officer continued to apply additional pressure to his joints, causing
2 Leal pain and injury.

3 32. The officers applied such intense pressure to Leal's wrist, arms and
4 shoulders, that Leal's legs involuntarily buckled and he suffered a lapse of bladder
5 control, urinating in his pants.

6 33. The entire time this was occurring Officer Siegel was present and within
7 arms reach of Leal and the officers. He had the ability to intercede but he neither did,
8 nor said, nothing to stop the assault. During the assault Officer Siegal stood at ease,
9 and, in a relaxed manner, he picked up some papers from the booking desk, as if
10 nothing was happening.

11 34. The officers then yelled for Leal to get off of the floor and they placed his
12 hands behind his back and applied handcuffs with such force that his circulation was
13 cut off in both hands.

14 35. Leal immediately informed the officers that the circulation was being cut
15 off and asked if they could please loosen the handcuffs to allow him to regain
16 circulation in his hands. The officers responded, "No."

17 36. A waist chain was then applied to Leal's waist. It was applied with such
18 force that it also restricted Leal's circulation and caused bruises on both sides of his
19 waist.

20 37. Leal had at no time physically resisted or assaulted the defendants in any
21 way, and the force used against him was unnecessary, unreasonable and excessive.

22 38. At no time during the events described above, was the plaintiff intoxicated,
23 incapacitated, a threat to the safety of himself or others, or disorderly.

24 39. Leal was then taken to the holding area immediately adjacent to the
25 booking desk and chained to a chair with his hands by his side.

26 40. At no time was Leal approached in response to his request for a blood
27 test.

28 40. For hours, Leal repeatedly attempted to get an officer's attention in an

1 attempt to have the handcuffs loosened so as to restore circulation to his hands. Leal
2 also requested to use the restroom.

3 41. At no time was Leal attended to by the staff, including the attending nurse.

4 42. At approximately 4:00 a.m., Leal was finally permitted to use the restroom
5 and was thereafter immediately placed in a holding cell without restraints.

6 43. At approximately 6:00 a.m., Leal was moved to another cell, and in the
7 process was given a TB shot by the attending nurse.

8 44. Leal was then transported to Elmwood County jail where he was later
9 bailed out at 11:05 a.m.

10 45. Defendant Siegel failed to include the details of any assault on Leal in his
11 police report. Defendant Zompolis wrote in a Non-Compliance Restraint Form which
12 set forth false statements regarding the assault and was made for the purpose of
13 covering up any wrongdoing on the part of the defendant officers.

14 46. Defendant Woods wrote falsely in a Non-Compliance Restraint Form that
15 he had interviewed Leal and that Leal had stated he wasn't ready to give the pen back
16 and that he had no injuries. Again, this false statement was for the purpose of covering
17 up the wrongdoing on the part of the defendant officers.

18 47. Leal has since received treatment for the injuries sustained in the assault
19 and has been diagnosed with nerve damage. He still has limited motion and use of
20 parts of his body.

21 48. Complaints of the incident were reported to the San Jose Police
22 Department, the City of San Jose, as well as the Santa Clara County Department of
23 Corrections.

24 49. Stephen Leal has since exhausted his administrative remedies by filing
25 claims with the Santa Clara County Department of Corrections, the San Jose Police
26 Department, and the City of San Jose.

27 50. As a direct and proximate result of the acts of the individual defendants,
28 the plaintiff Stephen C. Leal suffered the following injuries and damages:

- a. Violation of his constitutional rights under the Fourth and Fourteenth Amendments to the United States Constitution to be free from an unreasonable seizure of his person and property;
- b. Loss of his physical liberty;
- c. Attorney's fees and bond costs;
- d. Physical pain and suffering and emotional trauma and suffering, requiring expenditure of money for treatment.

51. The actions of the individual defendants violated the following clearly established and well settled federal Constitutional rights of Stephen C. Leal:

- a. Freedom from unreasonable seizure of his person and property; and,
- b. Freedom from the use of excessive, unreasonable and unjustified force against his person.

52. The conduct of these defendants was reckless and demonstrated a callous indifference to the federally protected rights of plaintiff entitling plaintiff to recover punitive damages against them individually.

Count One

42 U.S.C. § 1983 Against the Individual Defendants

53. Paragraphs 1 through 52 are incorporated herein by reference as though fully set forth.

54. Stephen Leal claims damages for injuries set forth above under 42 U.S.C. § 1983 against each of the individual defendants and Does 5-10 for violation of his constitutional rights under color of law.

Count Two

Assault and Battery Against the Individual Defendants

55. Paragraphs 1 through 54 are incorporated herein by reference as though fully set forth.

56. Each of the individual defendants and Does 5-10 assaulted and battered

Stephen Leal.

57. As a result of this assault and battery, the plaintiff was damaged as aforesaid.

Count Three

False Arrest and Imprisonment Against the Individual Defendants

58. Paragraphs 1 through 57 are incorporated herein by reference as though fully set forth.

59. The illegal and unwarranted acts of each of the individual defendants and Does 5-10 caused the plaintiff to be illegally arrested and illegally imprisoned.

60. As a result of this false arrest and imprisonment, the plaintiff was damaged as aforesaid.

Count Four

42 U.S.C. § 1983 Against the City of San Jose

61. Paragraphs 1 through 60 are incorporated herein by reference as though fully set forth.

62. Prior to July 22, 2004 the City of San Jose developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights or persons in San Jose, California which caused the violation of Leal's rights.

63. It was the policy and/or custom of the City of San Jose to inadequately and improperly investigate citizen complaints of police misconduct, and acts of misconduct were instead tolerated by the City of San Jose.

64. It was the policy and/or custom of the City of San Jose to inadequately supervise and train its police officers, including the defendant officers, thereby failing to adequately discourage further constitutional violations on the part of its police officers. The City of San Jose did not require appropriate in-service training or retraining of officers who were known to have engaged in misconduct.

65. As a result of the above described policies and customs, police officers of

1 the City of San Jose, including the defendant officers, believed that their actions would
2 not be properly monitored by supervisory officers and that misconduct would not be
3 investigated or sanctioned, but would be tolerated.

4 66. The above described policies and customs demonstrated and deliberate
5 indifference on the part of the policymakers of the City of San Jose to the constitutional
6 rights of persons coming in contact with policemen in the City's employ, and were the
7 cause of the violations of Stephen Leal's rights alleged herein.

8
9 **Count Five**

10 *42 U.S.C. § 1983 Against the County of Santa Clara*

11 67. Paragraphs 1 through 66 are incorporated herein by reference as though
12 fully set forth.

13 68. Prior to July 22, 2004 the County of Santa Clara developed and
14 maintained policies or customs exhibiting deliberate indifference to the constitutional
15 rights or persons in San Jose, California which caused the violation of Leal's rights.

16 69. It was the policy and/or custom of the County of Santa Clara to
17 inadequately and improperly investigate citizen complaints of misconduct, and acts of
18 misconduct were instead tolerated by the County of Santa Clara .

19 70. It was the policy and/or custom of the County of Santa Clara to
20 inadequately supervise and train its law enforcement and/or correctional officers,
21 including the defendant officers, thereby failing to adequately discourage further
22 constitutional violations on the part of its police officers. The County of Santa Clara did
23 not require appropriate in-service training or retraining of officers who were known to
24 have engaged in misconduct.

25 71. As a result of the above described policies and customs, law enforcement
26 and/or correctional officers of the County of Santa Clara , including the defendant
27 officers, believed that their actions would not be properly monitored by supervisory
28 officers and that misconduct would not be investigated or sanctioned, but would be

1 tolerated.

2 72. The above described policies and customs demonstrated and deliberate
3 indifference on the part of the policymakers of the County of Santa Clara to the
4 constitutional rights of persons coming in contact with policemen in the County's
5 employ, and were the cause of the violations of Stephen Leal's rights alleged herein.

6
7 *Prayer for Relief*

8 Wherefore, the plaintiff requests that this court:

9 73. Award compensatory damages to the plaintiff against the individual
10 defendants, the City of San Jose, and the County of Santa Clara jointly and severally;

11 74. Award punitive damages to the plaintiff against the individual defendants;

12 75. Award costs of this action to the plaintiff;

13 76. Award reasonable attorney's fees and costs to the plaintiff on Counts One
14 and Five of the Complaint;

15 77. Award such other and further relief to the plaintiff which this court deems
16 appropriate.

17 ///

18 ///

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: April 24, 2006

LAW OFFICES OF SEAN G. ERENSTOFT

Sean G. Erenstoft, Esq.
Attorney for Plaintiff,
STEPHEN LEAL

Dated: April 24, 2006

LAW OFFICE OF LOUIS P. DELL

Louis P. Dell, Esq.
Attorney for Plaintiff,
STEPHEN LEAL

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11150 West Olympic Blvd., Suite 1120, Los Angeles, CA 90064.

On April 25, 2006, I served the documents described as:

STIPULATION AND ORDER GRANTING LEAVE TO FILE A FIRST AMENDED COMPLAINT

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Clifford Greenberg Office of the City Attorney 200 East Santa Clara Street San Jose, CA 95113	Michael Rossi Office of the County Counsel 70 West Hedding Street, 9 th Fl. San Jose, CA 95110
Sean G. Erenstoft Law Offices of Sean G. Erenstoft 12100 Wilshire Blvd., Suite 1100 Los Angeles, CA 90025	

 X BY MAIL:

 X I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. The correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

 I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Burbank, California 91502.

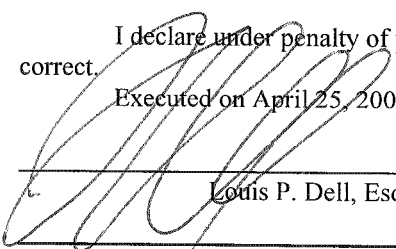
 BY OVERNIGHT DELIVERY:

 I caused the envelope to be delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence.

 X (FEDERAL) I declare under penalty of perjury that the foregoing is true and correct, and that I am a member of the bar of this court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2006, at Los Angeles, CA.



Louis P. Dell, Esq.

Proof of Service